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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,120	01/12/2005	Gerald Payne	66307-331-7	6789
25769 7590 02/24/2009 DYKEMA GOSSETT PLLC FRANKLIN SQUARE, THIRD FLOOR WEST 1300 I STREET, NW WASHINGTON, DC 20005				
EXAMINER WILLIAMS, JAMILA O				
ART UNIT		PAPER NUMBER		
3725				
MAIL DATE		DELIVERY MODE		
02/24/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/521,120

**Applicant(s)**

PAYNE ET AL.

**Examiner**

JAMILA WILLIAMS

**Art Unit**

3725

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2-5-2009 (RCE).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-6,10-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,10-14,16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***DETAILED ACTION***

***Continued Prosecution Application***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2-5-2009 has been entered.

***Claim Objections***

2. Claim 14 is objected to because of the following informalities: there is a lack of antecedent basis for "the fold line". Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,3-6,10,11,13,14,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over 6,332,631 to Kirk in view of 6,805,926 to Cote et al

(hereinafter Cote) and further in view of Applicant's Admitted Prior Art  
(hereinafter AAPA).

Kirk discloses a label comprising a substate (20) having first and second opposing surfaces and first and second adjoining sections (first section 34, second section 36 and 38), adhesive applied to the second surface of the first section for adhering the label in use to an article (column 4 lines 8-10), a second repositionable adhesive applied to at least a part of the second surface of the second section (column 4 lines 20-22), in now viewing position the first and second sections lie contiguously in the same plane adhered to the article (looking at figure 2, the label of Kirk is inherently capable of being adhered to an article in this manner). Kirk discloses the label having indicia 40 that is concealed when the second section is adhered in a non-viewing position and is revealed when the second section is lifted into a viewing position (column 3 lines 60-62).

Kirk does not however disclose having security features incorporated in or on at least one of the first and second sections.

Cote teaches having a label on a container with security features (column 3 lines 19-33 of Cote). Cote also teaches having the security feature concealed from view until the label is pulled up or removed from the container (column 3 lines 66-67 and column 4 lines 1-3 of Cote).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the security feature of Cote on the first or second sections of the label of Kirk for the purpose of providing a label that prevents counterfeiting.

Kirk modified by Cote discloses a label having a first and second section and having security features (security thread) associated therewith. This combination does not however clearly disclose that the security thread is viewed differently in transmissive or reflected light.

AAPA teaches on page 2 first paragraph of the specification that security features such as security threads have a different perception in reflected and transmitted light.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teachings of AAPA with the label of Kirk modified by Cote for the purpose of providing a different optical affect when the layer of the label are lifted, as recited in claims 1,3.

Regarding claim 4, Kirk modified by Cote and AAPA discloses at least one security feature located on the first and/or second surfaces of the second section (Kirk shows in figure 3, indicia on the second surface of second section 36, Cote provides the teaching of the security feature on the label).

Regarding claim 5, Kirk modified by Cote and AAPA discloses at least one security feature is located on the second surface of the first section (Cote teaches having a security feature on the second surface of the first section of the label- i.e. on

the adhesive side of the label, it would have been obvious to use this teaching in the label of Kirk for the purpose of providing a security feature that can be seen through a transparent container for example, see figure 1b of Cote).

Regarding claim 6, Kirk modified by Cote and AAPA discloses the first and second sections hinge about a fold line (perforations 60- see figure13. Kirk discloses in column 7 line 36-39 that a line of perforations are located at or about the interface between 34,36, these perforations provide a foldline as claimed).

Regarding claim 10, Kirk modified by Cote and AAPA discloses the security feature is an elongate security element (embedded security thread of Cote).

Regarding claim 11, Kirk modified by Cote and AAPA discloses the security element is partially or wholly embedded within the substrate (column 3 lines 54-55 of Cote).

Regarding claims 13-14, Kirk modified by Cote and AAPA discloses the first and second sections are separable (perforations 60 of Kirk); the separation occurs at the foldline by the perforations (60 is located at or about the interface between 34,36).

Regarding claim 16, see rejection of claim 1 above.

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk in view of Cote, in view of AAPA and further in view of 3,593,443 to Demetrius, Jr. et al (hereinafter Demetrius, Jr).

Kirk modified by Cote and AAPA discloses most elements of the claims but for the substrate having a plurality of second sections, each liftable from non-viewing to viewing position.

Demetrius, Jr teaches having a substrate with a plurality of second sections (figure 2 for example).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the second sections of Demetrius, Jr with the substrate of Kirk modified by Cote/AAPA for the purpose of providing more information on the substrate.

### ***Response to Arguments***

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. This is simply art of interest and was not used to reject any claims in this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMILA WILLIAMS whose telephone number is (571)272-4431. The examiner can normally be reached on Monday-Thursday 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dana Ross can be reached on 571-272-4480. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. W./  
Examiner, Art Unit 3725

/Dana Ross/  
Supervisory Patent Examiner, Art  
Unit 3725